

OVERVIEW OF THE PRIVACY ACT OF 1974, 2004 EDITION

INDIVIDUAL'S RIGHT OF AMENDMENT

- (1) An individual can request amendment of his own record. 5 U.S.C. § 552a(d)(2).
- (2) Ten "working" days after receipt of an amendment request, an agency must acknowledge it in writing and promptly either:
 - (a) correct any information which the individual asserts is not accurate, relevant, timely, or complete; or
 - (b) inform the individual of its refusal to amend in accordance with the request, the reason for refusal, and the procedures for administrative appeal. 5 U.S.C. § 552a(d)(2).
- (3) The agency must permit an individual who disagrees with its refusal to amend his record to request review of such refusal, and not later than 30 "working" days from the date the individual requests such review, the agency must complete it. If the reviewing official also refuses to amend in accordance with the request, the individual must be permitted to file with the agency a concise statement setting forth the reasons for disagreement with the agency. 5 U.S.C. § 552a(d)(3). The individual's statement of disagreement must be included with any subsequent disclosure of the record. 5 U.S.C. § 552a(d)(4). In addition, where the agency has made prior disclosures of the record and an accounting of those disclosures was made, the agency must inform the prior recipients of the record of any correction or notation of dispute that concerns the disclosed record. 5 U.S.C. § 552a(c)(4).

Comment:

For a discussion of subsections (d)(2)-(4), see OMB Guidelines, 40 Fed. Reg. 28,948, 28,958-60 (July 9, 1975). For a discussion of amendment lawsuits, see the section entitled "Civil Remedies," below. For cases discussing statements of disagreement, see Strong v. OPM, No. 03-6195, 2004 WL 542168, at *3 (6th Cir. Mar. 16, 2004) ("As [plaintiff] remains free to supplement his file to disprove [the reference's] opinion, OPM did not violate the Privacy Act by refusing to remove [the reference's] statement from [plaintiff's] file."), and Gowan v. United States Dep't of the Air Force, 148 F.3d 1182, 1188-89 (10th Cir. 1998) (concluding that although plaintiff "does not have a Privacy Act cause of action to require Air Force to amend records or attach a statement of disagreement" to records maintained in a properly exempt system of records, agency may "voluntarily comply" with the statement of disagreement provision).

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APPROVED FOR RELEASE DATE:
03-04-2010